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Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Criminal Revision. No. 240 Of 2006

(Memorandum of Criminal Revision u/s 397/ 401 of Cr.P.C.)

PETITIONERS: (In Jail)

1. Atma Ram Markam, S/o Kunwer Singh aged about 32Years,
2. Dhanesh Kumar Netam S/o. Jugaram Netam , aged about 21 years.
3. Suman S/o. Ludu Ram Netam aged about 23 years.

All are residence of Village- Bihavapara, Thana- Narharpur, Distt.- Kanker (C.G.)

1648/06

12/04/06

Sunil Sahu Advocate

R to D.

VERSUS-

RESPONDENT: State of Chhattisgarh, through the District Magistrate, Kanker (CG).

MEMORANDUM OF CRIMINAL REVISION UNDER SECTION 397/ 401 OF Cr.P.C.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.Rev. 240/ सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

12-05-2006

Shri P.C.Pant, learned Counsel with Shri Neelesh Pant, counsel for the applicants.

Shri Ravindra Agrawal, Panel Lawyer for the State.

Learned counsel for the applicants does not press on M.Cr.P.No.764/2006 for suspension of sentence and grant of bail, which is accordingly dismissed as not pressed.

Learned counsel for the applicants pray that this matter should be heard finally today at the stage of admission as he would assail the impugned judgment only on the question of sentence and not on merits.

Not opposed.

This Revision is finally heard only on the question of sentence.

By the impugned judgment, the applicants Atma Ram, Dhanesh Kumar Netam and Suman have been convicted under Sections-452, 323 read with Section-34 of IPC and applicant No.1 **Atma Ram** was sentenced to undergo rigorous imprisonment for 6 months and fine of Rs.200/- and in default of payment of fine to undergo additional simple imprisonment for 7 days under Section-452 of IPC and rigorous imprisonment for 3 months and fine of Rs.200/- in default of payment of fine to undergo additional simple

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XI-HC-22

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

imprisonment under Section-323 of IPC and applicant No.2 & 3 **Dhanesh** and **Suman** were sentenced to undergo rigorous imprisonment for 6 months and fine of Rs.200/- and in default of payment of fine to undergo additional simple imprisonment for 7 days under Section-452 of IPC and rigorous imprisonment for 3 months and fine of Rs.200/- in default of payment of fine to undergo additional simple imprisonment under Section-323 read with Section-34 of IPC respectively passed by Shri B. Ram, Additional Sessions Judge, Kanker in Criminal Appeal Number-93/2001.

Learned counsel for the applicants submitted that the fine amount has already been deposited. He also submitted that the applicants are youthful offenders. They being the only bread earners, the family is suffering. No previous conviction is proved against them. The offence alleged was not pre-meditated and was an offshoot of sudden quarrel. Sahedeo, the injured person had suffered an abrasion on the back and pain on the left shoulder with swelling. It was also contended that the applicants are undergoing sentence since 23-03-2006 and have thus undergone incarceration for a period of 49 days. On these premises, Shri P.C.Pant, learned counsel for the applicants argued that the sentence awarded by the appellate Court was harsh and prayed that it be reduced to the sentence already undergone by the applicants.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. Rev. 240/ सन् 2006

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand, Shri Ravindra Agrawal, learned counsel appearing for the State opposed the prayer.

Having considered rival submissions, I have perused the record of Criminal Case Number-72/2000. The incident was an offshoot of a sudden quarrel and was not pre-meditated. Charge and conviction of the appellants relate to causing hurt only to Sahdeo. Injuries found on Sahdeo were superficial except the swelling on the left shoulder. In this view of the matter, the sentence awarded by the trial Judge and affirmed by the appellate Court appears to be harsh. The applicants have already undergone incarceration for a period of 49 days. The applicants and Sahdeo are residents of the same village and no previous animosity is alleged by the prosecution.

Having considered the abovementioned circumstances, I am of the considered opinion that interest of justice would be served if the applicants are sentenced to imprisonment already undergone by them and to a fine of Rs.1,000/- (Rupees one thousand only) for each offence under Section 452 and 323 I.P.C. and in default of payment of fine, to undergo simple imprisonment for 3 months for each offence.

In view of the above, this revision is allowed. Conviction of the applicant-Atmaram under Section-452 & 323 IPC and that of the applicants-Dhanesh Kumar and Suman under Section 452 and

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आदेश का दिनांक, आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

323 read with Section 34 of the I.P.C. is maintained. However, the substantive sentence awarded by the appellate Court is modified and reduced to sentence already undergone by the applicants for each offence and to a fine of Rs.1,000/- for each offence under Section 452 and 323 I.P.C. and in default of payment of fine to undergo simple imprisonment for 3 months ~ for each offence ~. Fine already deposited by the applicants shall be adjusted. Out of the fine amount, Rs.5000/- shall be paid to Sahdeo, son of Naduram, resident of Bihava Para, P.S. Dudhawa, Dist. Kanker as compensation.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Tumare Anjani

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18.7.06 24.7.06